Genovese and DiDonno, Inc. *and* United Brotherhood of Carpenters and Joiners of America, Local Union No. 43, AFL–CIO. Case 34–CA–7357

November 29, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

On August 14, 1996, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondent filed exceptions and a supporting brief,[1] and the Charging Party filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[2] findings, and conclusions and to adopt the recommended Order as modified and set forth in full below.[3]

In agreeing with the judge that the Union had more than a mere suspicion that G.D.S. was the Respondent's nonunion operation, we note that the Union's business agent, Joseph Raymond, had heard rumors from union members that a nonunion company named G.D.S. might be related to the Respondent; that the name "G.D.S." is strikingly similar to the initials of the Respondent's name, as well as the first initial of the last name of the Respondent's vice president, Joseph Squillacote; and that Raymond discovered the Capitol Avenue jobsite where union members were working "nonunion" for Squillacote. Moreover, we deem the Union's December 12, 1995 request for information to be in the nature of an ongoing request that was still pending about 2 months later when the Union obtained records of state-required, certified payrolls pertaining to the Capitol Avenue jobsite. These records reveal that G.D.S. Contracting Corp. was an employer at that site, that Respondent's vice president, Squillacote, was the president of G.D.S., and that G.D.S. performed nonunion work at that site. Thus, the payroll records demonstrate that the Union's suspicion of the Respondent's double-breasting operation was reasonable.[4]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Genovese and DiDonno, Inc., Berlin, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to provide the Union with the information it requested that is necessary for and relevant to the Union's performance of its duties as the collective-bargaining representative of certain of the Respondent's employees.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Immediately provide the Union with the information it requested by letter dated December 12, 1995.

(b) Within 14 days after service by the Region, post at its Berlin, Connecticut facility copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 19, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

[1] The Respondent additionally filed a request for oral argument. The request is denied as the record, including the judge's decision, the exceptions, and the briefs adequately present the issues and positions of the parties.

[2] In its exceptions, the Respondent contends that the judge erred by admitting into evidence numerous documents that were not properly authenticated. We find that all of the exhibits on which we rely to reach our decision in this case were properly authenticated. Specifically, we rely on the Union's 1993–1996 collective-bargaining agreement with the Connecticut Construction Industries Association, the Respondent's January 26, 1996 letter to the Union notifying it of the Respondent's intention to terminate their collective-bargaining relationship upon expiration of that collective-bargaining agreement, and the payroll records pertaining to the Capitol Avenue jobsite, all of which were properly authenticated by the Union's business agent.

[3] We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[4] We find no merit in the Respondent's contentions that the Union's request for information was overly broad and that the General Counsel failed to show the relevance of each of the interrogatories within the request. See, e.g., *Brisco Sheet Metal*, 307 NLRB 361 (1992).

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail or refuse to provide United Brotherhood of Carpenters and Joiners of America, Local Union No. 43, AFL–CIO with requested information that is necessary for and relevant to the performance of its duties as the collective-bargaining representative of certain of our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL immediately provide the Union with the information it requested by letter dated December 12, 1995.

GENOVESE AND DIDONNO, INC.

Thomas E. Quigley, Esq., for the General Counsel.
Timothy Brignole, Esq., for the Respondent.
Barbara J. Collins, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on July 18, 1996, in Hartford, Connecticut. The complaint here, which issued on March 11, 1996, and was based upon an unfair labor practice charge that was filed on January 19, 1996, by United Brotherhood of Carpenters and Joiners of America, Local Union No. 43, AFL–CIO (the Union), alleges that Genovese and DiDonno, Inc. (Respondent) violated Section 8(a)(1) and (5) of the Act by failing and refusing to furnish the Union with information that it requested on December 12, 1995,[1] which information was necessary for, and relevant to, the Union as the collective-bargaining representative of certain of Respondent's employees.

FINDINGS OF FACT

I. JURISDICTION

Respondent admits, and I find, that up until October, Respondent, a Connecticut corporation, had been engaged as a contractor in the building and construction industry, and during the 12-month period ending February 29, 1996, Respondent provided services valued in excess of $50,000 to Quinnipiac College, an enterprise within the State of Connecticut which is directly engaged in interstate commerce. I find that Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

Respondent admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE FACTS

Since about 1970, the Union has been the collective-bargaining representative of certain employees of the Respondent, through its acceptance and agreement to the collective-bargaining agreements between the Union and the Labor Relations Division, The Associated General Contractors of Connecticut, Inc., a Division of Connecticut Construction Industries Association, Inc. (the Association). The most recent contract between the Union and the Association is effective for the period April 1, 1993, through March 31, 1996. The evidence establishes that some of the Union's members have been employed by Respondent. Received in evidence were monthly contribution reports from Respondent to the Union's benefit funds for the period January through June listing from 6 to 17 employees for whom contributions were made.

Joseph Raymond, the Union's business representative, testified that at a union meeting sometime prior to November, a member or members mentioned that a company named G.D.S. and Respondent might be related. Shortly thereafter, early one morning, in late November, he observed two flatbed trailers loaded with drywall, driving on Capital Avenue in Hartford, Connecticut. He followed the trucks and asked one of the drivers where the delivery was going, and he told him that it was for "Genovese." He asked for the destination of the delivery and the driver told him the fourth floor at 401 Capital Avenue. When he arrived at that location he saw a member of the Union and a member of another local; he asked them who they were working for, and they said that it was not a union job and that they were working for Genovese and Joseph Squillacote, Respondent's vice president, and admittedly a supervisor and agent of Respondent. (This testimony was objected to as hearsay and the answer was not accepted for the truth of the matter.) Ernest Mazzarella, the superintendent on the job, approached them and accused Raymond of interfering with the employees' work. Raymond identified himself and said that the employer, Respondent, was under contract with the Union and Mazzarella responded that Squillacote was on his way. About 5 minutes later, Squillacote arrived and Raymond told him that what he was

[1] Unless indicated otherwise, all dates referred to herein relate to the year 1995.

doing was illegal. Squillacote said that he was doing what he had to do, and Raymond said: "This is all Genovese and DiDonno, this is not a different company. They're working for you." Raymond said that he had a problem with that, and would do whatever he could, legally, to stop it. Squillacote told him to do whatever he had to do. While he was there, he observed two union members, and one individual who was a member of a sister local, employed at the site.

By letter dated December 12 to Squillacote at the Respondent, Raymond wrote:

> It has come to my attention that your company is, or may be, in violation of the collective bargaining agreement with this union, by reason of the operation by your company or its principals, of another company named G.D.S., or by the performance of work which would otherwise be performed by your company. Specifically, we believe that there is or may be a violation of Articles 3 and 4 and possibly others.
>
> G.D.S. is presently performing the same services that were previously performed by your company and your employees. In addition, we believe that there is a connection between your company and G.D.S., in either a financial and/or personnel related manner. We believe that your intent in creating G.D.S. was to circumvent the provisions of our collective bargaining agreement.
>
> This letter constitutes a grievance under Articles 3 and 4 of the Union agreement. We wish to meet with you at your earliest convenience in order to discuss ways to remedy the situation if in fact there is a violation. We would appreciate it if you could provide detailed answers to the attached list of questions.

There followed 79 two-part questions; the first part asked about an aspect of Respondent's business, and the second part asked the identical question about G.D.S. By letter dated January 26, 1996, and entitled "Notice of Termination," Respondent, by Squillacote, wrote to the Union:

> Genovese and DiDonno, Inc. hereby gives NOTICE that it will terminate such agreement at its expiration date of March 31, 1996, pursuant to Article 26 of the collective bargaining agreement with the United Brotherhood of Carpenters & Joiners of America, Local Union 43, there will be no renewal or modification of such agreement after said date Genovese and DiDonno, Inc. will no longer be bound by the terms of that agreement.

Other than this letter, the Union received no response to its request for information dated December 12, and never received this information from the Respondent.

IV. ANALYSIS

The credible, uncontradicted testimony of Raymond, together with the exhibits herein, establish that since about 1970 the Union has been the collective-bargaining representative of Respondent's employees who perform carpentry or any similar work as described in article 2 of the contract. The most recent contract was effective through March 31, 1996. On December 12, in order to learn more about G.D.S. and its connection to Respondent, the Union sent Respondent the questionnaire, which Respondent never responded to.

In *Sheraton Hartford Hotel*, 289 NLRB 463, 463–464 (1988), the Board cogently set forth the law in these situations:

> Section 8(a)(5) obligates an employer to provide a union requested information if there is a probability that the information would be relevant to the union in fulfilling its statutory duties as bargaining representative. Where the requested information concerns wage rates, job descriptions, and other information pertaining to employees within the bargaining unit, the information is presumptively relevant. Where the information does not concern matters pertaining to the bargaining unit, the union must show that the information is relevant. When the requested information does not pertain to matters related to the bargaining unit, to satisfy the burden of showing relevance, the union must offer more than mere suspicion for it to be entitled to the information. [Citations omitted.]

A union satisfies this burden by demonstrating a reasonable belief supported by objective evidence for requesting the information. *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994). Potential or probable relevance is sufficient to give rise to an employer's obligation to furnish the information; a union is not required to assemble a prima facie case. *Brisco Sheet Metal*, 307 NLRB 361, 366 (1992); *Reiss Viking*, 312 NLRB 622 (19930. The Board does not pass upon the merits of a union's claim that the contract was breached in determining whether the requested information was relevant.

Raymond had heard rumors from members that Respondent was operating another company nonunion. Shortly thereafter he followed a truck to a construction site in Hartford; he was told that the delivery was for "Genovese" and, at the jobsite, he observed union members employed on a nonunion job. He also observed Squillacote, admittedly Respondent's vice president, on the site and Squillacote never denied Raymond's allegations that G.D.S. was an alter ego of the Respondent. Although this evidence might not be enough for the Union to prevail in an arbitration, it is enough to satisfy the Board's requirements as described above. The General Counsel has established that the requested information is relevant to the Union as the collective-bargaining representative of certain of the Respondent's employees, and the Respondent was therefore required to produce that information for the Union. By failing to do so, the Respondent violated Section 8(a)(1) and (5) of the Act. *Walter N. Yoder & Sons*, 270 NLRB 652 (1984).

CONCLUSIONS OF LAW

1. The Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the act.

2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. By not furnishing the Union with the information that it requested by letter dated December 12, 1995, which information was relevant to the Union as the collective-bargaining representative of certain of Respondent's employees, the Respondent violated Section 8(a)(1) and (5) of the Act.

THE REMEDY

Having found that Respondent has violated the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. In that regard, I shall recommend that Respondent be ordered to, immediately, furnish the Union with the information that it requested by letter dated December 12, 1995.

[Recommended Order omitted from publication.]